In the High Court of Judicature at Madras

Dated: 03/09/2002

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice K.Gnanaprakasam

Writ Petition No.1814 of 1994
and W.P.Nos. 1816, 9192, 9193 of 1994

The Management of Kaleeswara
Mills- A Unit, Coimbatore. ..... Petitioner in WPs.
No.1814 & 1816/1994
and Respondent 2 in
WPs.9192 & 9193/1994

N.Kandhasamy ..... Petitioner in WP.
No.9192 of 1994

R.Kaliappan ..... Petitioner in WP.
No.9193 of 1994

-Vs-

1. The Presiding Officer,
Labour Court,
Coimbatore 641 018. ..... Respondent 1 in all
the writ petitions

2. R.Marimuthu ..... Respondent 2 in WP
No.1814 of 1994

2. R.Chinnasamy ..... Respondent 2 in WP
No.1816 of 1994

Writ Petitions No.1814 and 1816 of 1994 filed under Article 226 of the Constitution of India for the issue of writ of certiorari to call for the records of the first respondent in I.D. No.291 and 292 of 199 1 dated 27.07.1993 and to quash the same.

Writ Petitions No.9192 and 9193 of 1994 filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus to call for the concerned records from the first respondent Labour Court, Coimbatore relating to the Award dated 27.07.1993 in I.D. No.109 and 114 of 1986 and quash the same and issue consequential direction to the second respondent

management in these petitions to pay the petitioners in these petitions the back wages amounting to Rs.1,55 ,000/- each and award costs.

!For Petitioner in WPs.
No.1814 and 1816/1994and Respondent 2 in
WPs.9192 & 9193/1994 : Mr.Vijaya Narain

For Petitioners in WPs. No.9192 and 9193/1994 : Mr.N.G.R.Prasad
for M/s.Row & Reddy

Respondent 1 : Labour Court

For Respondent 2 in WPs.1814 & 1816/1994 :Mrs.Rita Chandrasekaran

:ORDER

R.Jayasimha Babu, J.

Six persons who were employed in various departments of Kaleeswara Mills, Coimbatore were tried on a charge of murder before the Additional Sessions Court Coimbatore. All of them were convicted and sentenced to life imprisonment by judgment dated 06.04.1985. The employer mill immediately thereafter issued notice to all of them to show cause as to why they should not be dismissed from service, the notice having been issued under the Standing Orders which empowers the employer to dismiss persons convicted for an offence involving moral turpitude without having to hold any domestic enquiry with regard to that conduct. Subsequently, all the six persons were dismissed on 25.04.1985.

2. Four of those six persons raised industrial disputes thereafter. An award came to be passed in those disputes by the Labour Court on 18.12.1999 in which the validity of the dismissal was upheld, but with a rider that, in the event of they being acquitted in appeal, they will be entitled to reinstatement with back wages. That award was challenged by the employer in writ petitions No.11355 of 1990 and batch.

3. During the pendency of those petitions, all the six workmen were acquitted by the High Court by judgment dated 08.03.1991 giving them the benefit of doubt. Four of them, who were parties to the award, were reinstated in service on 17.05.1991. Thereafter, this Court allowed the writ petitions filed by the employer on 17.11.1992 to a limited extent and directed the Labour Court to consider afresh the employees' claim for back wages during the period of their non employment.

4. On remand, the Labour Court held by it's award dated 27.07.1993 that the workmen are not entitled to back wages till the date of reinstatement in service. That award has been upheld in the case of two of the four workmen

by a learned single Judge of this Court in Writ Petitions No.3613 and 3614 of 1994 decided on 19.10.2000.

5. The two workmen, who did not raise the dispute in 1985 along with four others, raised industrial disputes after their acquittal by the High Court, in the year 1991. In those industrial disputes, awards were made upholding their claim for reinstatement. The Labour Court also proceeded to grant them full back wages from the time of their dismissal till their reinstatement.

6. The writ petitions filed by the employer challenging those awards along with the writ petitions filed by two of the employees against the denial of the back wages to them, which are now placed before us are being disposed off by this common order.

7. We may first consider the question in the employer's writ petitions with regard to reinstatement of the two workmen who raised industrial dispute after their acquittal by the High Court.

8. It is contended by the employer that the disputes having been raised six years after the dismissal, it suffers from laches. We do not find any substance in that submission. The order of dismissal was solely on the ground of conviction. The dismissal when made, was perfectly proper and could not have been assailed. However, when that conviction was subsequently set aside in an appeal, it was open to the employees to seek review of the order of dismissal, in the light of the acquittal directed by the appellate Court. The dispute raised by the employees after the employer failed to reinstate even after their acquittal in an appeal, cannot be said to suffer from any laches. Moreover, these two employees are entitled to a treatment similar to that afforded to the other four, who were also accused and had been convicted and who had also been later acquitted along with these two employees. The direction for reinstatement of these two employees by the Labour Court, therefore, is upheld.

9. So far as grant of back wages is concerned, while the award made by the Labour Court in relation to workmen who had raised disputes in the year 1985 denied them back wages altogether, the award made on the disputes raised by two other workmen in the year 1991 provides for payment of full back wages to them. All six workmen were involved in the same incident; they had been dismissed on the same day on account of the conviction with regard to the same offence and all of them had been subsequently acquitted under the same judgment of the High Court in the year 1991. The denial of back wages by the Labour Court in relation to two other workmen similarly placed, as already noticed, has been upheld by a learned single Judge of this Court.

10. It was submitted by the learned counsel for the employees that as reinstatement is directed consequent upon the acquittal in an appeal by the workmen who had been dismissed on the conviction by the trial Court, back wages must necessarily follow. Counsel for the employer, on the other hand, submitted that such workmen are not entitled to any back wages at all, as such

workmen had, on account of their conduct and involvement in criminal proceedings, disabled themselves from remaining in employment and it would be unfair to make the employer pay for such conduct on the part of the employees.

11. Counsel for the employees placed reliance on the decision of the Supreme Court in the case of Deputy Director of Collegiate Education (Administration), Madras, vs. S. Nagoor Meera, (1995) 3 SCC 377. In that case, a two Judge Bench of the apex Court held that under Article 311(2) second Proviso (a), a Government servant can be dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge, immediately on his conviction by the trial Court and without having to wait for such conviction being upheld in appeal or revision that the employee had filed. The question of benefits, if any, the employee would get, in the event of the appeal being allowed and the employee being reinstated, was not directly in issue. The Court, in the course of it's judgment observed that, if the Government servant/accused is acquitted on appeal or in other proceedings, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service.

12. Learned counsel for the employer submitted that in other cases where the issue directly arose regarding entitlement for back wages to the employee dismissed on conviction, but later acquitted and who, thereafter had been reinstated, the Supreme Court has categorically held that such employees are not entitled to back wages.

13. Attention was invited by the counsel for employer to the three Judge Bench decision of the apex Court in the case of Management of Reserve Bank Of India, New Delhi vs. Bhopal Singh Panchal, (1994) 1 SCC 541, wherein the apex Court upheld the denial of full wages for the period of suspension to an employee who had been dismissed from service on conviction by the criminal Court and who was later reinstated after his acquittal by an appellate Court. The power to deny such wages which had been provided for in the Rules was upheld, and such denial was also held to be reasonable. The Court observed, "During the period, the employee renders no work. He is absent for reasons for his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of ' no work, no pay' and positively inequitable to those who have to work and earn their pay."

14. In the case of Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat), (1996) 11 SCC 603, a two Judge Bench of the apex Court considered this question again. The Court observed, "The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered

only if the respondents have taken action be way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging his duties. In that context, his conduct becomes relevant. Each case requires to be considered in it's own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail." 15. In the case of State of U.P. vs. Ved Pal Singh, (1997) 3 SCC 48 3, the Court, with regard to the payment of back wages to an official of the Government, who had been reinstated after his conviction on corruption charges has been set aside in appeal, observed, "The society has to pay the price for corrupt officers from public exchequer. Therefore, when the Court directs payment of back wages on reinstatement, the Court/Tribunal is required to consider the backdrop of the circumstances and pragmatically apply the principle to the given set of facts. No abstract principle of universal application could be laid in that behalf.

16. In the last of the decisions brought to our notice by the counsel for the employer is the case of Hukmi Chand, vs. Jhabua Cooperative Central Bank Ltd., (1998) 2 SCC 291. The apex Court therein upheld the denial of back wages to an employee who had been reinstated after his conviction in the criminal case had been set aside in the appeal and held that the discretion vested in the employer under the relevant Rule had been properly exercised.

17. The general principle is that if the employer is not responsible for the denial of employment to the employee, the employer is not to be mulcted with the payment of back wages. If under the Standing Orders or the Statutory rules, the employee who is convicted for an offence is liable for dismissal and on the basis of such conviction dismissed, such dismissal cannot be regarded as amounting to an improper act on the part of the employer and thus amounting to wrongful denial of work to the employee as the conduct leading to the conviction is not a matter of employer's creation, but is a conduct for which the employee is responsible. The subsequent success of the dismissed employee in having that conviction set aside in an appeal or revision, would only enable such an employee to seek reinstatement which claim is normally to be allowed by the employer as the basis for that order of dismissal being the conviction, the conviction itself having been set aside, there would be no tenable reason for keeping the employee out of employment. The employer, however, wou ld not become liable for payment of back wages for the period between the date of dismissal and the date of reinstatement as the denial of work during that period is not on account of employer's action or omission, but is solely by reason of the involvement of the employee in the criminal proceedings which had initially resulted in his conviction.

18. A decision rendered by one of us sitting single in which fifty per cent of the back wages was given in similar circumstances, was brought to our notice. The decisions of the Supreme Court brought to our notice now, had not been placed before the Court when that judgment was rendered.

19. The award of Labour Court denying back wages to the workmen is required to be and is upheld. The award of the Labour Court in the cases of the two workmen who had raised Industrial Dispute in the year 1991 cannot be

sustained and is set aside. It is made clear that in the circumstances of the case, the employer was required to reinstate the workmen after their acquittal on appeal and they will have a right to claim back wages for the period subsequent to the date on which they brought their acquittal to the notice of the employer and sought reinstatement.

20. Writ Petitions No.1814 and 1816 of 1994 filed by the employer are allowed in part. Writ Petitions No.9192 and 9193 of 1994 filed by the employees are dismissed subject to what has been directed in the foregoing paragraphs.

Index : Yes
Website: Yes

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Copy to

The Presiding Officer, Labour Court, Coimbatore 641 018.